

State of New Mexico
LEGISLATIVE EDUCATION STUDY COMMITTEE

REPRESENTATIVES

Rick Miera, Chair
Roberto "Bobby" J. Gonzales
Jimmie C. Hall
Mimi Stewart
Thomas E. Swisstack
W. C. "Dub" Williams

State Capitol North, 325 Don Gaspar, Suite 200
Santa Fe, New Mexico 87501
PH: (505) 986-4591 FAX: (505) 986-4338
<http://legis.state.nm.us/lcs/lesc/lescdefault.asp>



SENATORS

Cynthia Nava, Vice Chair
Vernon D. Asbill
Mary Jane M. Garcia
Gay G. Kernan

ADVISORY

Ray Begaye
Nathan P. Cote
Nora Espinoza
Mary Helen Garcia
Thomas A. Garcia
Dianne Miller Hamilton
John A. Heaton
Rhonda S. King
Sheryl M. Williams Stapleton
Jim R. Trujillo
Teresa A. Zanetti

ADVISORY

Mark Boitano
Carlos R. Cisneros
Dianna J. Duran
Lynda M. Lovejoy
Mary Kay Papen
John Pinto
William E. Sharer

D. Pauline Rindone, Ph.D., Director
Frances R. Maestas, Deputy Director

October 15, 2007

MEMORANDUM

TO: Legislative Education Study Committee

FR: Frances R. Maestas *FRM*

RE: STAFF REPORT: RESIDENTIAL TREATMENT CENTERS

Introduction

- New Mexico, like other states receiving federal funding from the *Individuals with Disabilities Education Act* (IDEA), is required through its state education agency (SEA) or Public Education Department (PED) to provide a free and appropriate public education (FAPE) to all children with disabilities residing in the state between the ages of 3 and 21. This obligation also encompasses school-age youth with disabilities who have been placed in a facility to receive services through a residential treatment center (RTC).
- As defined in the regulations of the Children, Youth and Families Department (CYFD), the statutory certification and licensing authority of youth RTCs in New Mexico, "residential treatment services" is "a program that provides 24-hour therapeutic care to children/adolescents with severe behavioral, psychological, neurobiological, or emotional problems, who are in need of psychosocial rehabilitation in a residential facility.
- According to CYFD, 30 facilities are currently certified RTCs (see Attachment 1) and an additional 19 are licensed RTCs (see Attachment 2) to provide residential treatment services for school-age children. The difference between the two lists, CYFD reports, is that while all RTC facilities must be "licensed" to meet health and safety requirements, the "certified" RTCs are eligible to receive Medicaid dollars.

State Issues

- According to the National Conference of State Legislatures (NCSL), a number of states, including New Mexico, have had difficulty in determining the legal and financial responsibility of an SEA or local school district with an RTC within its boundaries to provide FAPE to non-district school-age youth residing in the RTC, including New Mexico.
- In a series of presentations requested by the Legislative Education Study Committee (LESC) during the 2005 and 2006 interims, PED reported that the department has not been able to provide clear guidance or direction on the issue of who is responsible for the costs of providing special education services to non-district students residing in an RTC primarily because of inconsistencies in federal and state law.
- PED explained that federal law requires each state to ensure that FAPE is available to all children with disabilities who **reside** within the state. However, New Mexico statutes are in conflict regarding the residency requirement and PED believes that the conflicts must be resolved to arrive at a solution on responsibility of financial burden.
- As an example, PED noted that in 2003, the Albuquerque Public Schools (APS) requested guidance on the responsibility of the district to provide FAPE to out-of-state students with disabilities placed by their parents in an RTC within APS's boundaries. In its discussions with the district, PED stated, APS argued that (1) a minor's legal residence is where the parent or legal guardian lives; (2) the IDEA requires a student's state of residence to ensure that FAPE is available, even when the student is placed out of state; and (3) the home state, therefore, retains the legal and financial responsibility for ensuring that its students with disabilities have FAPE available in other states.
- In its response to APS, PED affirmed that the district's arguments complied with the requirements of the federal IDEA law but pointed out that APS did not consider the provisions of at least one section of New Mexico law [Section 22-12-4A] that clearly provides two possible ways – residence or presence – for a student to be entitled to attend public school within a given district. Herein lies the inconsistency.
- To further complicate the situation, another section [22-12-5C] of state law allows, but does not require, a local school board to charge tuition for out-of-state students. This permissive language, PED stated, does not grant the department the authority to require parents or the home state to reimburse the school district for services it is providing.
- At the conclusion of the PED testimony in the 2006 interim, the committee agreed to request that PED conduct a review of current law and RTC data to address the inconsistencies reported by PED and to provide recommendations to the LESC prior to the 2007 legislative session.
- In response to the committee's request, PED provided a written report, dated December 13, 2006, requesting the committee to consider:
 - amending current statute "so that the right to attend public school would be clearly based on New Mexico residency; and

- changing PED rule to include RTCs in the definition of an “educational jurisdiction” of a public agency to provide educational services for children with disabilities; and require local school districts to negotiate and enter into contractual agreements with other states and with other public agencies for the provision and funding of FAPE for students residing in RTCs.
- An LESC staff review of PED rule relating to special education indicates that for the most part, the recommended rule changes were included in a recent revision of the PED rule that became effective June 29, 2007.
- **Issue:** The PED rule, in the section relating to the right to FAPE, limits eligibility for FAPE to age-appropriate children with disabilities who **reside** in New Mexico. While this provision complies with the federal IDEA requirements, it conflicts with section in current state law that, without reference to *residency*, requires school districts to provide special education and related services appropriate to meet the needs of **all** children.

Review of Other State’s Policies

In an effort to review state policies relating to students residing in RTCs, LESC staff requested legislative staff from other states to provide state policy information on two key issues:

1. Whether a school district (receiving district) with an RTC within its boundaries is responsible for providing services to a student with disabilities that has been placed in the RTC but is counted and funded in the home district; and whether the receiving school district with the RTC can receive state funding or be reimbursed by the home district of the student.
2. Whether the district is responsible for providing services to an out-of-state student with disabilities and if the receiving district has the authority to charge tuition or request reimbursement from the home state of the student.

Legislative staff from the states of Arkansas, Colorado, Florida, Colorado, Iowa, Kansas, Ohio, and Vermont responded to the inquiry. With the exception of Florida, all of the states reported that state policy has been adopted to:

- Determine (assign) responsibility and costs for special education students residing in an RTC.
- Reimburse the school district with an RTC within its boundaries for providing special education and related services for non-district students, including out-of-state students.

The form of reimbursement for a school district with an RTC varied, but included:

- for Arkansas: a per-student reimbursement based on the state’s formula foundation aid multiplied by a cost factor (2.00 for a nondisabled student and 2.10 for a disabled student) with a provision that if the reimbursement exceeds available funds, the reimbursement is prorated;

- for Colorado: a statewide average per pupil funding amount for the children served in the RTC during a month plus an “excess cost” billing and reimbursement by the district of residence;
- for Iowa: through a contract for services, equivalent funds from the student’s home district;
- for Kansas: state grant assistance for the lesser of costs of services or the amount the district would have received if the student had been counted as two pupils under the state’s school finance law;
- for Ohio: tuition rate set by statute that is essentially the local tax revenue per pupil payable on a full-time-equivalent (FTE) basis for the part of the year that the student is in the RTC. In addition, at least for a decade, the Legislature has also appropriated \$1.0 million per year for a “pilot program” to provide formula funding for RTCs along with tuition; and
- for Vermont: 90 percent of student’s annual costs exceeding \$50,000 for costs not covered by IDEA and the remaining costs from the student’s home district.

In all of the states, out-of-state student reimbursements for all of these states are determined through a contractual agreement with the home state of residence.

The remaining state, Florida, reported that it is currently reviewing the issue of responsibility for a student residing in a residential facility in that state, including costs. They noted, however, that a child’s presence is used to determine residency and, as such, the facility in which the child resides determines the school district that is responsible for providing FAPE.

Florida reported that in 2003, a review was conducted to determine the number of out-of-state children residing in residential facilities and the cost of educational services being provided by the state. It was determined that although the Florida Department of Education (DOE) includes special education and related services information in its student database, the data for children served in residential facilities was unreliable. Among the review findings, it was reported that while school districts were aware that the US Department of Education (USDE) regarded a child a resident of the state in which (1) the parent or guardian legally resides, or (2) the child is a ward of the state, many of the districts were using the address of the facility as the student’s address and submitting the information for funding through the Florida Education Finance Program.

In 2004 and 2005, the Florida legislature considered legislation to clarify that, consistent with federal law, residency is a requirement for funding special education services and that a child’s residency is determined by the residency of the parent; however, the legislation did not pass. As a result, the Florida DOE reports that it continues to utilize a child’s presence in the state to determine residency and will not change this practice without legislative action.

Recent Federal Guidance

- In October 2006¹, the National Association of Psychiatric Health Systems requested clarification from the US Office of Special Education Programs (OSEP), about the costs of providing special education services for school-age children residing in a residential facility.
- Specifically, the association asked the following two questions:
 1. Which local school district would be responsible for the costs of providing special education services to a child placed in a residential facility by a non-educational public agency² that does not pay for such services – the school district where the child/family resides or the district where the facility is located?
 2. Which state would be responsible for these costs if the child is from out of state – the state where the facility is located or the state of the child’s residence?
- The US OSEP administrative judge in his response to the association provided “informal guidance” indicating that:
 - Under IDEA requirements, the SEA (PED), must ensure that interagency agreements are in effect between the local school district and each non-educational public agency obligated under federal or state law to provide or pay for any special education services necessary for ensuring FAPE to children with disabilities in the state. If the interagency agreement is in place, the local school district may claim reimbursement for the services from the non-educational public agency that did not provide or pay for those services and require the agency to reimburse the local school district in accordance with the terms of the agreement.
 - Although the IDEA does not address which local school district in a state is responsible for the cost of a child’s placement, the SEA (PED) must exercise general supervision over all educational programs for children with disabilities residing in the state. Since the SEA has the ultimate responsibility for ensuring the availability of FAPE to these children, if there is a question regarding which school district is responsible for the cost of a child’s placement, the SEA (PED) is responsible for ensuring that the issue is resolved. However, the Legislature could specify which school district in a state is responsible for the costs of residential placement in state law.
 - As for a child from outside the state, as interpreted by the USDE, a child is a resident of the state in which (1) the parent or guardian legally resides, or (2) the child is a ward of the state. However, the state initiating the placement is responsible for ensuring that the child’s individualized education plan (IEP) is developed and implemented because it is that state’s obligation to make FAPE available to all children with disabilities residing within the state. Therefore, this definition clearly shows that residence is not necessarily the location of the school or facility in the state where the child has been placed.

¹ Refer to Attachment 3, *Special Ed Connection Case Report*.

² Non-education public agencies include mental health, social services, and juvenile justice agencies.

LESC Survey

In order to learn of the (1) educational services being provided by school districts with an RTC within its boundaries, and (2) the information and resources provided by the RTC to the school district, LESC staff asked all school district superintendents and regional educational centers (RECs) to complete a web-based survey.

In total, 40 responses were received: 37 out of 89 school districts and four out of nine RECs (see Attachment 4). Of the 40 responses, 29 school districts and the four RECs indicated that they do not provide services to RTC student. The remaining eight districts indicated that they have an RTC within their boundaries and provide educational services for students residing in those facilities. Attachment 5 summarizes some selected survey questions and the responses of the eight school districts. The responses indicate that of the eight districts:

- six are contacted for provision of educational services by an RTC;
- seven provide both regular and special education services and the remaining district provides only special education services;
- all eight are providing educational services for more than 30 school days;
- seven provide certified teachers and special ancillary staff for the provision of educational services. One district indicates that only a classroom area and writing instruments are provided by the RTC;
- five are provided with the parent's legal residence by the RTC;
- three are provided with the student's PED-issued identification (ID) and IEP by the RTC;
- all eight are required to provide student counts, but not costs, to PED; and
- three enter into a formal agreement, such as a Memorandum of Understanding, with the RTC and one RTC (which is private facility) enters into an agreement with the students' parents.

According to the survey responses, all of the school districts that provide educational services to students residing in an RTC receive dollars from the Public School Funding Formula and federal IDEA for the services. In the comment section of the survey, one district, however, implies that the student count dates are inadequate and the service level categories for special education students need to be re-examined.

With fewer than half of the 89 school districts responding to the LESC survey, it is difficult to determine how many school districts statewide provide educational services to students residing in RTCs or to draw conclusions that apply to all school districts that are providing educational services for these students. However, it is possible to note certain issues among the respondents that may be indicative of conditions statewide, including inconsistency in the:

- type of educational resources being provided by an RTC, such as classroom space and equipment;
- student information available for a school district from an RTC, including the parent's legal residence and student's IEP and for New Mexico students, the PED-issued ID;
- negotiation of formal agreements between the school district and RTC for the educational services provided for an RTC student.

Policy Options the Committee May Wish to Consider

Based on the issues reported by PED in providing guidance or direction to school districts on the issue of who is responsible for the costs of providing special education services to non-district students residing in an RTC and the informal guidance provided by the USDE, the committee may wish to consider introducing legislation to add a new section to current law relating to the placement of students in residential treatment centers. Among its provisions, the new section could:

- define “residency” for the purposes of assigning responsibility for the provision of educational services and for the costs of a student residing in an RTC;
- require the use of interagency and interstate agreements for the placement of students in RTCs; and
- require PED to adopt a rule governing students residing in RTCs for the purpose of allocating public school funds from a student’s home district or obtaining reimbursement from a student’s home state. In order to collect reliable data on the number of district and out-of-district and out-of-state students being served in these facilities, including costs. PED could assign a “school code” to each RTC and require local school districts to submit data to the Student Teacher and Accountability Reporting System at PED using the PED-issued student ID for New Mexico students and a PED-issued unique identifier for out-of-state students.

The committee may also consider requesting PED (1) to examine statute and rule in other states that have already developed a methodology for reimbursing a school district for the educational services provided for students in RTCs and (2) to provide recommendations for legislation to the LESC prior to the 2008 legislative session.

Residential Treatment Services Facilities Certified by Children, Youth, and Families Department

| PROGRAM | LOCATION | DESCRIPTION | AGES SERVED | TYPE | FUNDING | CAPACITY | COUNTIES SERVED |
|-------------------------------------|-------------|---|--------------|-----------|---|----------|-------------------------------------|
| 1 Assurance Home, Inc. | Roswell | Therapeutic home for severely abused, sexually abused or abandoned & homeless children | Ages 12 - 18 | Nonprofit | Medicaid, United Way, Community Support | 26 | Chaves |
| 2 Carlsbad Community Res. Facility | Carlsbad | Structured living environment for adjudicated males on probation/parole | Ages 13 - 17 | State | Medicaid | 12 | Statewide |
| 3 Casa de Su Vida dba: Su Vida, Inc | Santa Fe | Treatment for boys with alcohol/drug dependence, emotional, behavioral disorders | Ages 12 - 19 | Nonprofit | Medicaid | 11 | Statewide |
| 4 Casa Mesita, Inc. | Los Alamos | Group home with mental health services; specializes in sexual abuse recovery | Adolescents | Nonprofit | Medicaid | 8 | Statewide |
| 5 Children's Treatment Center | Albuquerque | Provides mental health services for abused children & adolescents and those with mental and/or emotional problems | Ages 4 - 12 | Private | Medicaid | 20 | Bernalillo; Statewide; Out-of-State |
| 6 Desert Hills | Albuquerque | Provides behavior & mental health services to children/adolescents and their families; a nonpublic school & a public charter school on site | Ages 5 - 21 | Private | Medicaid | 88 | Statewide |
| 7 Families & Youth, Inc. | Las Cruces | 2 group homes (girls & boys) provide structured therapeutic environments for adolescents who meet Medicaid standards | Ages 13 - 18 | Private | Medicaid | 12 & 12 | Dona Ana |

Sources: Children, Youth and Families Department (10-07 List)
and individual institutions

Residential Treatment Services Facilities Certified by Children, Youth, and Families Department

| PROGRAM | LOCATION | DESCRIPTION | AGES SERVED | TYPE | FUNDING | CAPACITY | COUNTIES SERVED | |
|--|-------------|--|---------------------|-----------|-----------------------------------|----------|---------------------------------|----|
| 8 Futura Vista Group Home | Clovis | (Closed 10/1/07- late Medicaid payments); provided mental health, behavior management tutoring services for boys with high risk behavior disorders | Ages 14 -17 | Private | Medicaid | 16 | Statewide | 8 |
| 9 Guidance Center of Lea County/Humphrey House | Hobbs | Mental health services, counseling and shelter for abused, neglected and/or adjudicated youth | Ages 12 - 17 | Nonprofit | Medicaid | 13 | Statewide | 9 |
| 10 Halvorson House | Farmington | Indiv. & family therapy for abused, neglected or adjudicated youth; behav./emot./substance/ alcohol dependency treatment | Ages 12 - 17 | Nonprofit | Medicaid | 12 | Statewide San Juan primarily | 10 |
| 11 Hogares, Inc | Albuquerque | Life skills development and behavioral health services; substance abuse treatment; sexual offender program for male and female residents | Ages up to 18 years | Nonprofit | Medicaid, State | 35 | Statewide | 11 |
| 12 Intermountain Youth | Santa Fe | Drug & alcohol, sex offenses, conduct disorders treatment for court-referred male & female adolescents from Native American reservations | Ages 10 - 21 | Nonprofit | Medicaid, Direct Tribal Referral | 28 | Statewide | 12 |
| 13 La Familia, Inc. | Albuquerque | Deaf Group Home provides therapeutic, education support, job & life skills training, school to work transition for adolescents | Ages 15 - 21 | Nonprofit | Medicaid | 12 | Statewide | 13 |
| 14 La Placita | Alamogordo | Assists adolescent girls referred from parole board or probation office to re-enter society; counseling, education and treatment services | Ages 16 - 18 | Nonprofit | CYFD, Juvenile Justice Department | 12 | Statewide | 14 |

Sources: Children, Youth and Families Department (10-07 List)
and individual institutions

Residential Treatment Services Facilities Certified by Children, Youth, and Families Department

| | PROGRAM | LOCATION | DESCRIPTION | AGES SERVED | TYPE | FUNDING | CAPACITY | COUNTIES SERVED | |
|----|-------------------------------|-------------|---|-------------|-----------|---|----------|-----------------|----|
| 15 | Life Options Academy | Albuquerque | Intensive program for at-risk teen mothers & their babies providing school/job mentoring, life skills training, case management and therapy | Adolescents | Nonprofit | Medicaid, Community support, Private donations | 16 | Statewide | 15 |
| 16 | Mesilla Valley Hospital | Las Cruces | Mental health treatment for adjudicated youth on probation, parole or under commitment; and non-adjudicated youth | Ages13 - 18 | Private | Medicaid, Private Insurance, Self-pay | 64 | Statewide | 16 |
| 17 | Namaste | Los Lunas | Individual and family therapy for abused, neglected or sexually abused children; behavior disorders and childhood depression | Ages 6 - 12 | Nonprofit | Medicaid, Private Insurance | 12 | Statewide | 17 |
| 18 | New Sunrise Regional | San Fidel | Substance abuse, mental health treatment for abused, neglected, adjudicated Native Americans on parole/probation or under commitment | Ages13 - 18 | Nonprofit | Indian Health, Insurance, Medicaid | 22 | Statewide | 18 |
| 19 | New Vision Group Home | Clovis | Advocacy, education, family, mental health, substance abuse services for male & female adolescents who are adjudicated or non-adjudicated | Ages11 - 18 | Private | Medicaid | 28 | Statewide | 19 |
| 20 | NM Behavioral Health Services | Las Vegas | Psychiatric treatment for committed sex offenders or youth with inappropriate sexual activity; individual and group therapies | Ages13 - 18 | Public | Medicaid, State, Private Insurance | 16 | Statewide | 20 |
| 21 | Our Lady of Mt. Carmel | Gallup | Mental health treatment, behavior health programs for Native American children & adolescent girls who have been abused or neglected | Ages 6 - 17 | Nonprofit | Laguna, Navajo Tribes, Franciscan Mission Sisters | 19 | Statewide | 21 |

Sources: Children, Youth and Families Department (10-07 List)
and individual institutions

Residential Treatment Services Facilities Certified by Children, Youth, and Families Department

| PROGRAM | LOCATION | DESCRIPTION | AGES SERVED | TYPE | FUNDING | CAPACITY | COUNTIES SERVED | |
|---|--------------|--|--------------|-----------|---|----------|-----------------|----|
| 22 Pathway House dba: El Rocky Mountain Management Services | Clovis | Substance abuse groups, group & indiv. therapy for males who are abused/neglected, or in the legal system | Ages 12 - 18 | Private | Medicaid, Private Insurance | 16 | Statewide | 22 |
| 23 Presbyterian Med. Svcs. dba: San Juan Juvenile Services | Farmington | Treatment facility for substance abuse & mental health problems for adjudicated youth under commitment | Adolescents | Nonprofit | San Juan County | 12 | San Juan | 23 |
| 24 Sequoyah Adolescent Treatment Center | Albuquerque | Part of the NM Dept. of Health, treats mental disorders; violent youth or youth with a history of violence | Ages 13- 18 | Nonprofit | Medicaid, State General Fund | 36 | Statewide | 24 |
| 25 Taos Group Home dba: Casa de Corazon | Taos | Treats serious emotional issues & behavior disorders; individual, group & family counseling; bi-lingual Spanish-English services | Adolescents | Nonprofit | Medicaid | 12 | Statewide | 25 |
| 26 Team Builders dba: Bonem House | Portales | Family, individual, & group therapies for boys & girls who are abused/neglected or have behavior disorders | Ages 7 - 13 | Nonprofit | Medicaid, Private Insurance | 8 | Statewide | 26 |
| 27 The Peak at Santa Teresa dba: Grace House | Carlsbad | Mental health, behavioral health and substance abuse treatment for adjudicated boys and their families | Ages 13 - 18 | Nonprofit | State Managed Care thru Alliance Hospital | 15 | Statewide | 27 |
| 28 The Peak Behavioral Health | Santa Teresa | Mental health treatment for court referred children and adolescents; behavior, emotional & substance abuse issues addressed | Ages 5 - 18 | Private | Medicaid, Private Insurance | 104 | Statewide | 28 |

Residential Treatment Services Facilities Certified by Children, Youth, and Families Department

| PROGRAM | LOCATION | DESCRIPTION | AGES SERVED | TYPE | FUNDING | CAPACITY | COUNTIES SERVED |
|--|-------------|--|-------------|-----------|--|----------|--------------------------|
| 29 UNM-Children's Psychiatric Hospital (CPH) | Albuquerque | Mental, physical, emotional, and behavioral health treatment for emotionally disturbed children; family education | Ages 4 -17 | Nonprofit | State, UNM Hospital, Medicaid, Private Insurance | 30 | Statewide |
| 30 Zimmerman Consulting Inc. dba: Sandhill Child Development | Los Lunas | Mental health, educational services for boys & girls with emotional/behavioral disorders; private school on premises | Ages 5 - 14 | Private | Private Insurance, Private pay | 32 | Statewide & Out-of-State |

Residential Facilities Licensed by the Children, Youth, and Families Department

| | PROGRAM | LOCATION | DESCRIPTION | AGES SERVED | TYPE | FUNDING | CAPACITY | COUNTIES SERVED | |
|---|---|-------------|--|-----------------------------|-------------------------|---|----------|--|---|
| 1 | Albuquerque Christian Cottage | Albuquerque | Children's Community Home for boys & girls without a home due to abuse, neglect and/or abandonment | Ages 6 - 18 | Non-profit; Faith-based | Donations, gifts, grants | 30 | Statewide & Out-of-State | 1 |
| 2 | Amistad Youth Shelter Youth Development, Inc. | Albuquerque | Children's Crisis Shelter serving adolescents who are homeless, victims of domestic violence; short-term | Ages 12 - 17 | Non-profit | Fed, State, City & County | 12 | Bernalillo & Statewide | 2 |
| 3 | Childhaven | Farmington | Children's Crisis Shelter; food, clothing, medical, educational assistance, transportation, counseling | Ages 0 - 17 | Non-profit | Donations, gifts, grants | 34 | San Juan, Navajo Reservation (AZ, UT, NM); Statewide | 3 |
| 4 | Christian Child Care | Gallup | Children's Crisis Shelter for non-adjudicated youth; arrangement for perm. housing and foster placement | Ages 0 - 12 | Non-profit; Faith-based | Donations, gifts, grants | 20 | Statewide | 4 |
| 5 | El Ranchito de los Ninos | Los Lunas | Children's Community Home for boys & girls; long-term, non-denominational home; alternate to foster care | Ages 0 - 18 | Non-profit | Private (churches, civic groups, foundations) | 16 | Statewide | 5 |
| 6 | Families & Youth, Inc. | Las Cruces | Children's Crisis Shelter for adjudicated & non-adjudicated youth; run-away shelter; alternate middle school; other svcs | Varies depending on program | Non-profit | CYFD, Federal grants | 16 | Dona Ana; Luna; Sierra | 6 |
| 7 | Fountaingate Children's Home | Alamogordo | Children's Community Home providing residential care, help for families in crisis or in need | Ages 0 - 18 | Non-profit | Private Donations, gifts, grants | 18 | | 7 |

Residential Facilities Licensed by the Children, Youth, and Families Department

| | PROGRAM | LOCATION | DESCRIPTION | AGES SERVED | TYPE | FUNDING | CAPACITY | COUNTIES SERVED | |
|----|---------------------------|-------------|--|--------------|-------------------------|--|----------|--|----|
| 8 | La Otra Puerta | Santa Fe | Children's Crisis Shelter with case management, crisis intervention, counseling for youth & their families | | Non-profit | | 13 | Los Alamos, McKinley, Mora, Rio Arriba, San Juan, San Miguel, Sandoval, Santa Fe, Taos | 8 |
| 9 | Manuelito Children's Home | Gallup | Children's Community Home for Navajo children; tutorial, counseling, spiritual/religious services | Ages 0 - 18 | Non-profit; Faith-based | Donations, gifts, grants | 15 | Statewide | 9 |
| 10 | Navajo Missions Inc. | Farmington | Children's Crisis Shelter provides temporary care for children in dangerous situations; other svcs, inc. on-site elementary school | Ages 0 - 18 | Non-profit; Faith-based | Donations, gifts, grants | 20 | Statewide | 10 |
| 11 | Navajo Missions, Inc. | Farmington | Children's Community Home for children; Elementary satellite school grades 1 - 5 temp.; and year-round live-in care | Ages 0 - 18 | Non-profit; Faith-based | Donations, gifts, grants | 20 | Statewide & Out-of-State | 11 |
| 12 | New Day Shelter | Albuquerque | Children's Crisis Shelter provides safety and crisis intervention for homeless youth; structured environment | Ages 10 - 17 | | Donations, gifts, grants | 16 | | 12 |
| 13 | New Mexico Baptist Home | Portales | Children's Community Home | Ages 0 - 18 | Non-profit; Faith-based | Donations, gifts, grants | 48 | Statewide | 13 |
| 14 | NM Boy's Ranch | Socorro | Children's Community Home for boys; teaches responsibility, teamwork, and respect; On-site school grades 7 - 12 | Ages 9 - 17 | Non-profit | Private donations, some family payment | 40 | Statewide | 14 |

Residential Facilities Licensed by the Children, Youth, and Families Department

| | PROGRAM | LOCATION | DESCRIPTION | AGES SERVED | TYPE | FUNDING | CAPACITY | COUNTIES SERVED | |
|----|------------------------------|-------------|--|--------------|-------------------------|--------------------------|----------|---------------------------------|----|
| 15 | NM Christian Children's Home | Portales | Children's Community Home for homeless, abused, neglected or abandoned children; Christian counseling | Ages 0 - 18 | Non-profit; Faith-based | Donations, gifts, grants | 45 | Statewide; Out-of-State (Texas) | 15 |
| 16 | NM Girl's Ranch | Lamy | Children's Community Home for adolescent girls with mild to moderate behavioral and emotional problems | Ages 12 - 18 | Non-profit | Donations, gifts, grants | 20 | Statewide | 16 |
| 17 | Rancho Valmora | Valmora | Residential services & on-site school for adolescents experiencing educational, emotional and/or behavior problems | Ages 12 - 18 | Private | Private Pay | 82 | Out-of-State primarily | 17 |
| 18 | San Juan County Shelter | Farmington | Children's Crisis Shelter for male & female youth who are abused, neglected, abandoned; and/or runaway youth | Ages 0 - 18 | Public, County, County | County, State | 16 | San Juan | 18 |
| 19 | Villa Santa Maria | Cedar Crest | Residential services for children & adolescents experiencing educational, emotional and/or behavior problems | | Non-profit | | 32 | | 19 |

48 IDELR 106

107 LRP 40223

Letter to Covall**Office of Special Education Programs**

N/A

December 22, 2006**Related Index Numbers****110.015 Office of Special Education Programs (OSEP)****290.010 Obligation to Serve****425. RESIDENCY REQUIREMENTS****470.045 Joint SEA/LEA Responsibilities****Judge / Administrative Officer****Alexa Posny, Director****Case Summary**

Even if a non-educational public agency decides that a student requires placement in a residential facility, the state in which the student resides will remain responsible for ensuring that the student receives the special education and related services that he requires. OSEP informed the head of a mental health association that the SEA retains responsibility for ensuring the child receives FAPE. OSEP noted that both the IDEA and the Part B regulations require states to provide special education services to all eligible children with disabilities who live within its borders. "This obligation to ensure that FAPE is available encompasses children with disabilities who are placed by a non-educational public agency, such as a mental health, social services or juvenile justice agency," OSEP Director Alexa Posny wrote. Recognizing that the IDEA does not indicate which LEA in the state is responsible for providing FAPE to a student in a non-educational residential placement, OSEP explained that the SEA's duty to exercise general supervision over all educational programs for children with disabilities required it to resolve any disputes between districts. OSEP further noted that the SEA in which the student resides is responsible for ensuring a timely receipt of special education services. However, OSEP observed that the SEA or

LEA could seek reimbursement from the non-educational public agency if the agency fails to supply any services that the law obligates it to provide.

Full Text**Appearances:**

Mr. Mark Covall

Executive Director

National Association of Psychiatric Health Systems

701 13th Street, NW, Suite 950

Washington, DC 20005-3903

Dear Mr. Covall:

This is in response to your October 2, 2006 letter in which you pose two questions: (1) For children who are placed by a non-educational public agency (e.g., mental health, social services, juvenile justice), which local educational agency (LEA) would be responsible for payment for special education/related services if the sending agency did not pay? Would the LEA where the child/family resides be responsible, or would it be the LEA where the facility is located? and (2) If the LEA where the facility is located is responsible and the child is from out of state, which state's interagency agreement would govern -- again, the state where the facility is located or the state of the child's residence?

Under Part B of the Individuals with Disabilities Education Act (IDEA), each State (through its State educational agency (SEA)) must ensure that a free appropriate public education (FAPE) is available to all eligible children with disabilities in mandated age ranges residing within the State¹. FAPE is made available through the LEAs and other public agencies² in the State, under the general supervision of the SEA. 20 U.S.C. 1402(8) and 1412(a)(1)(A); 34 CFR §§ 300.101 and 300.149. This obligation to ensure that a FAPE is available encompasses children with disabilities who are placed by a non-educational public agency, such as a mental health, social services or juvenile justice agency.

If a public agency determines in an individual situation that an eligible child cannot receive an appropriate education from the programs that the public agency conducts and, therefore, placement in a public or private residential program is necessary in order to provide special education and related services to the child, the program, including non-medical care and room and board, must be at no cost to the parents of the child. 34 CFR § 300.104. In addition, each SEA must ensure that a child with a disability who is placed in, or referred to, a private school or facility by a public agency is provided special education and related services in conformance with the child's individualized education program (IEP), and with the standards that apply to education provided by the SEA and LEAs (including the requirements of IDEA-Part B). 20 U.S.C. 1402(8) and 1412 (a)(10)(B); 34 CFR § 300.146.

For a child placed outside the State by an educational or non-educational State or local agency, the State initiating the placement (i.e., the "placing State") generally is responsible for ensuring that the child's IEP is developed and implemented. 34 CFR §§ 300.101 and 300.149. This is because the obligation to make FAPE available covers all children with disabilities residing in the State. Residence is not the location of the school or facility in the State where the child has been placed. As traditionally interpreted by the Department, a child is a resident of the State in which (1) the parent or guardian legally resides, or (2) the child is a ward of the State.³

Determining the specific school district or LEA in a State that is responsible for the cost of a residential placement is a matter of State law, policy or practice. Although the IDEA does not address which LEA in a State is responsible for the cost of a placement under Part B, the SEA must exercise general supervision over all educational programs for children with disabilities residing in the State, and has ultimate responsibility for ensuring the availability of FAPE to these children. 34 CFR § 300.149. Therefore, if there is a question regarding which LEA is responsible for the cost of a placement, the SEA is

responsible for ensuring that the issue is resolved.

Each State may use whatever State, local, Federal, and private sources of support are available in the State to cover the cost of serving an eligible child who is publicly-placed in a residential program. However, the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services is being determined. 34 CFR § 300.103(a) and (c).

Under the requirements of 34 CFR § 300.154, the SEA also must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between the SEA and each non-educational public agency that is otherwise obligated under Federal or State law to provide or pay for any special education and related services necessary for ensuring FAPE to children with disabilities within the State. 34 CFR § 300.154(a).

If a public agency other than educational agency fails to provide or pay for these special education and related services, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services in a timely manner. The LEA or State agency may then claim reimbursement for the services from the non-educational public agency that failed to provide or pay for those services, and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism. 34 CFR § 300.154(b)(2).

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have any other questions, please feel free to contact my office. I hope the information in this letter adequately addresses your questions.

¹Children whose parents have placed them in a private school or facility even though FAPE was

available are an exception to this rule.

²The term "public agency" includes the SEA, LEAs, Educational Service Agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. 34 CFR § 300.33.

³Although additional provisions apply in order to ensure that an impartial person acts on behalf of the child when he or she is a ward of the State, that child retains all rights under IDEA. See 20 U.S.C. 1415(b)(2) and 34 CFR §§ 30.30 and 300.519.

Statutes Cited

20 USC 1402(8)
20 USC 1412(a)(1)(A)
20 USC 1412(a)(10)(B)

Regulations Cited

34 CFR 300.101
34 CFR 300.149
34 CFR 300.104
34 CFR 300.146
34 CFR 300.103(a)
34 CFR 300.103(c)
34 CFR 300.154(a)
34 CFR 300.154(b)(2)

Respondents to LESC Survey Regarding Residential Treatment Centers

| | District | Providing Services to RTC students | Name of RTC and location | |
|----|----------------------------------|------------------------------------|--|----|
| 1 | Albuquerque Public Schools | Yes | (1) Hogares del Valle; and (2) Children's Treatment Center (both Albuquerque) | 1 |
| 2 | Artesia Public Schools | No | | 2 |
| 3 | Aztec Municipal Schools | No | | 3 |
| 4 | Carlsbad Municipal Schools | Yes | Grace House (Carlsbad) | 4 |
| 5 | Carrizozo Municipal Schools | No | | 5 |
| 6 | Chama Valley Independent Schools | No | | 6 |
| 7 | Cimarron Municipal Schools | No | | 7 |
| 8 | Clovis Municipal Schools | | | 8 |
| 9 | Corona Public Schools | No | | 9 |
| 10 | Des Moines Municipal Schools | No | | 10 |
| 11 | Dexter Consolidated Schools | No | | 11 |
| 12 | Farmington Municipal Schools | Yes | San Juan Residential Treatment Center (Farmington) | 12 |
| 13 | Fort Sumner Municipal Schools | No | | 13 |
| 14 | Gadsden Independent Schools | Yes | Peak Behavioral Services (Santa Teresa) | 14 |
| 15 | Grady Municipal Schools | No | | 15 |
| 16 | Hagerman Municipal Schools | No | | 16 |
| 17 | Hobbs Municipal School | Yes | Humphrey House (Hobbs) | 17 |
| 18 | Hondo Valley Public Schools | No | | 18 |
| 19 | House Municipal Schools | No | | 19 |
| 20 | Lordsburg Municipal Schools | | | 20 |

| | District | Providing Services to RTC students | Name of RTC and location | |
|----|---|---|---|----|
| 21 | Loving Municipal Schools | No | | 21 |
| 22 | Maxwell Municipal Schools | No | | 22 |
| 23 | Moriarty Municipal Schools | No | | 23 |
| 24 | Portales Municipal Schools | Yes | Bonham House (Portales) | 24 |
| 25 | Regional Education Cooperative #10 (Southwest) | No | | 25 |
| 26 | Regional Education Cooperative #3 (High Plains) | No | | 26 |
| 27 | Regional Education Cooperative #4 (Northeast) | No | | 27 |
| 28 | Regional Education Cooperative #9 | No | | 28 |
| 29 | Roy Municipal Schools | No | | 29 |
| 30 | Ruidoso Municipal Schools | | | 30 |
| 31 | San Jon Municipal Schools | | | 31 |
| 32 | Santa Fe Public Schools | Yes | Su Vida Residential Treatment Center (Santa Fe) | 32 |
| 33 | Socorro Consolidated Schools | | | 33 |
| 34 | Springer Municipal Schools | No | | 34 |
| 35 | T or C Municipal Schools | No | | 35 |
| 36 | Texico Municipal Schools | No | | 36 |
| 37 | Tucumcari Public Schools | No | | 37 |
| 38 | Vaughn Municipal Schools | No | | 38 |
| 39 | Wagonmound Public Schools | Yes | Rancho Valmora (Valmora) | 39 |
| 40 | Zuni Public Schools | No | | 40 |

Summary of Selected Survey Responses of School Districts Providing Educational Services to Students in Residential Treatment Centers

| District | RTC Name and location | Who makes initial contact with school district to provide educational services? | What type of education-related services does school district provide? | For how long a time period are services provided? | What educational resources does RTC provide? | What does school district provide? | Does RTC provide parent's legal residence to school district? | Does RTC provide PED issued student ID? | Does RTC provide copy of student's IEP? | Does PED require school district to report RTC services and costs? | Is Memorandum of Understanding or other agreement in place? |
|--------------------------------|--|---|---|---|---|---|---|---|---|---|---|
| 1 Albuquerque Public Schools | (1) Hogares del Valle; and (2) Children's Treatment Center (both Albuquerque) | RTC | special education for elementary, middle and high school levels | more than 30 school days | classroom and other educational space | certified teachers, ancillary staff, equipment and classroom materials | No | No | Sometimes | Only attendance reporting for related services | No |
| 2 Carlsbad Municipal Schools | Grace House (Carlsbad) | RTC | regular and special education: middle and high school levels | more than 30 school days | no response | no response | No | No | No | no response | No response |
| 3 Farmington Municipal Schools | San Juan County Residential Treatment Center (Farmington) | RTC | regular and special education: middle and high school levels | for as long as student is placed | classroom space, other educational space and equipment | certified teachers, ancillary staff, equipment and classroom materials | Yes | Yes | Yes | RTC students included in district student enrollment | Agreement with San Juan county |
| 4 Gadsden Independent Schools | Peak Behavioral Services (Santa Teresa) | the student's New Mexico home district | special education for elementary, middle and high school levels | from 40 days to one year | one classroom area which is a girl's therapeutic dayroom, and pens | ancillary staff, classroom space, equipment and classroom materials | Yes | No | No | regular and special education services, but not costs | yes, with RTC |
| 5 Hobbs Municipal Schools | Humphrey House (Hobbs) | RTC | special education: elementary, middle and high school levels | more than 30 school days | classroom space and materials | ancillary staff, classroom space, equipment and classroom materials | No | No | No | regular and special education student count on required reporting dates | No |
| 6 Portales Municipal Schools | Bonham House (Portales) | RTC | regular and special education: middle and high school levels | more than 30 school days | | ancillary staff, classroom space, other educational space, equipment, and classroom | No | No | No | none | None |
| 7 Santa Fe Public Schools | Su Vida Residential Treatment Center (Santa Fe) | RTC | regular and special education: middle and high school levels | more than 30 school days | classroom space and materials | certified teachers, equipment, and classroom materials | No | No | Yes | regular and special education student count on required reporting dates | yes, with RTC |
| 8 Wagonmound Public Schools | Rancho Valmora (Valmora) | the student's parent | special education for middle and high school levels | more than 30 school days | ancillary staff, classroom space, other educational space, equipment, and classroom | | Yes | Yes | Yes | special education students from out-of-state | Yes, with student's parents |